

ORIGINAL

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF GEORGIA

2005 NOV 30 PM 2:46

AUGUSTA DIVISION

CLERK V. McCarthy
SO. DIST. OF GA

GLENN MITCHELL FLORENCE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CV 104-096

(Formerly CR 101-087)

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation to which objections have been filed. None of Petitioner's objections have merit. However, the Court will briefly address the objection that the Magistrate Judge has improperly "interfered" with the continuation of a criminal case by issuing a Report and Recommendation without Petitioner's consent. There has been no improper interference by the Magistrate Judge because only a recommendation has been made.¹ This Court has conducted a *de novo* review of the file to determine whether the recommendation will be adopted as the final opinion of the Court. Only a District Court can make a Magistrate Judge's recommendation final. See, e.g., Glover v. Alabama Bd. of Corr.,

¹It has long been settled that § 2255 motions may be referred to a Magistrate Judge for a recommendation on disposition. See Matthews v. United States, 533 F.2d 900, 903 (5th Cir. 1976). Indeed, Rule 8(b) of the Rules Governing Section § 2255 Proceedings for the United States District Courts provides for referring § 2255 motions to a Magistrate Judge to prepare, *inter alia*, recommendations for disposition.

660 F.2d 120, 122 (5th Cir. Unit B Oct. 26, 1981). Thus, this Court, not the Magistrate Judge, decides what the final judgment in the case will be, and there is no merit to Petitioner's argument on this point.

Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of this Court. Therefore, Petitioner's § 2255 motion is **DENIED**, this civil action is **CLOSED**, and the Clerk is **DIRECTED** to enter a final judgment in favor of Respondent.

SO ORDERED this 30th day of November, 2005, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE